

[\*Mills v. Arizona Public Service Co.\*](#), 92-ERA-13 (ALJ Dec. 20, 1991)

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**U.S. Department of Labor**  
Office of Administrative Law Judges  
800 K Street, N.W.  
Washington, D.C. 20001-8002

DATE: DEC 20 1991

IN THE MATTER OF

STEPHEN MILLS  
Complainant

v.

ARIZONA PUBLIC SERVICE COMPANY  
Respondent

CASE NO.: 92-ERA-13

### **RECOMMENDED DECISION AND ORDER**

This matter arises under the employee protection provision of the Energy Reorganization Act of 1974 ("Act"), as amended, 42 U.S.C. § 5851, and the regulations issued thereunder at 29 C.F.R. Part 24.

On September 9, 1991 Stephen Mills (Complainant) filed a Complaint under the Act with the Phoenix District Office of the Wage and Hour Division, United States Department of Labor. On October 4, 1991 the Phoenix District Office issued a determination on the Complaint. The determination stated that Wage and Hour's investigation did not verify that discrimination was a factor in the actions comprising the Complaint and that these actions were not retaliatory. The determination notified

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Complainant of his right to appeal to this Office. However, the notification listed this office's former address. Consequently, Complainant's appeal telegram was never received by this Office.

Based on a telephone conference which the undersigned conducted with the parties on December 16, 1991, and based on review of a copy of Complainant's appeal telegram, I find that Complainant's appeal was timely.

By letter dated December 2, 1991, Complainant and Arizona Public Service Company ("Respondent") filed with the Secretary of Labor an original Settlement Agreement and Mutual General Release ("Agreement") and a Joint Stipulation for (1) dismissal with prejudice of Complainant's Section 210 Complaint and his appeal from the determination of the Phoenix District Office and (2) approval of the parties' Settlement Agreement resolving Complainant's Section 210 Complaint ("Stipulation"). The original documents which were sent to the Secretary cannot now be located. However, the parties have provided the undersigned with copies of these documents, which are attached hereto and incorporated herein.

Under the terms of the Agreement, Respondent has agreed to transfer Complainant to the position of Emergency Planning Coordinator I. The parties have stipulated and agreed that the Complaint shall be dismissed with prejudice. Upon review of the Agreement and Stipulation, I find that the terms of the settlement are fair, adequate, and reasonable. Accordingly, I RECOMMEND that the Secretary promptly ORDER approval of the Agreement and dismissal of the Complaint with prejudice.

JOHN M. VITTON  
Deputy Chief Judge

JMV/rd

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SETTLEMENT AGREEMENT AND  
MUTUAL GENERAL RELEASE

This Settlement Agreement and Mutual General Release ("Agreement") is made and entered into by and between STEPHEN A. MILLS ("Mills") and ARIZONA PUBLIC SERVICE COMPANY ("APS")

**RECITALS:**

The parties to this Agreement desire to fully and finally settle and terminate any and all differences, disputes, claims and disagreements between them, including but not limited to any and all disputes concerning claims which have been, or could have been, asserted by APS or Mills against the other in a matter presently pending before the Department of Labor based on a complaint filed by Mills on or about September 9, 1991 with the Phoenix Wage and Hour District Office, United States Department of Labor ("Mills Section 210 Complaint").

**AGREEMENT**

1. This agreement is entered into solely for purposes of compromise, and each party hereby expressly acknowledges and agrees that the other party hereto has not admitted, and by execution and performance of this agreement, does not admit, and in fact, expressly denies, any liability or obligation to the other party.

2. For and in consideration of the foregoing premises and the mutual covenants, promises, releases and agreements contained herein, the adequacy of which is hereby acknowledged, APS and Mills hereby mutually release, acquit and forever discharge each other, and their respective employees, agents, representatives, personal representatives, executors, administrators, successors, assigns, directors, officers, affiliates, parent corporations, and related entities of and from any and all actions, causes of action, suits, claims, demands, rights, controversies, debts, agreements, damages, costs, expenses, liabilities and compensation whatsoever they now have or may hereafter have on account or arising out of any matter, thing, or event which has happened, developed or occurred, whether known or unknown, at any time prior to the date of the execution of this Agreement, specifically including, but not limited to, and all claims of any kind (including claims for attorneys' fees) stemming from, arising out of, or in any way related to any of the happenings, events or circumstances described or alluded to in Mills' Section 210 Complaint, or any paper filed in the administrative proceeding resulting from Mills' Section 210 Complaint. This FULL WAIVER OF ALL CLAIMS includes without limitation, any and all claims based in tort or in contract (express or implied), or based on any federal, state or local law or common law. A copy of Mills' Section 210 Complaint is attached to this Settlement Agreement and Mutual General Release, and incorporated herein by reference.

3. This Agreement shall release and specifically include, but is not limited to, all claims against APS arising out of Mills' Section 210 Complaint. Furthermore, the parties agree that this release of claims includes any and all claims of any kind that Mills has asserted or could have asserted against APS.

4. APS shall transfer Mills to the position of Emergency Planning Coordinator I, a position which Mills desires and which has greater promotional potential, from his present position of Security Instructor. This reassignment shall occur upon the approval by the Secretary of Labor of the parties' Joint Stipulation for: (1) Dismissal with prejudice of Mills' Section 210 Complaint and his appeal from the determination of the Phoenix District Office of the United States Department of Labor and (2) Approval of the parties, Settlement Agreement and Mutual General Release resolving Mills' Section 210 Complaint. This approval by the Secretary of Labor shall take the form of an Order dismissing with prejudice Mills' Section 210 Complaint and his appeal from the determination of the Phoenix District Office of the United States Department of Labor and approval of the parties' Settlement Agreement and Mutual General Release resolving Mills' Section 210 Complaint.

5. The parties hereto further covenant and agree with one another that they will not bring, commence, institute, maintain, prosecute or instigate any action at law, or proceeding in equity, administrative proceeding, administrative complaint of any kind, or

otherwise, nor prosecute or sue the other, or any of them, or their parent companies, affiliates, predecessors, successors, assigns, partners, agents, employees, officers, employers, associates or representatives, either affirmatively or by way of cross-claim, defense or counterclaim or by any other manner or at all by any alleged claim, demand, liability or cause of action in any manner stemming in any way from either party's action prior to the execution of this Agreement.

6. The parties acknowledge that they are aware that they or their attorneys may hereafter discover facts different from or in addition to the facts which they now know or believe to be true with respect to the subject matter of this Agreement, but that is their intention hereby to, and they hereby do, fully, finally, absolutely and forever settle any and all claims, disputes, differences which do now exist, may exist or heretofore have existed between them, and that in furtherance of such intention, the general releases herein given by said parties shall be and remain in effect as full and complete general releases, notwithstanding the discovery of any different or additional facts.

7. The parties hereby represent and warrant that they have not heretofore assigned, transferred or purported to assign or transfer, voluntarily or involuntarily, to any person or entity, any right, claim, debt, liability, obligation, account, action or any part or portion thereof, which is released herein.

8. The provisions of this Agreement shall be deemed to bind, obligate and extend to and inure to the benefit of, the parties hereto, and their successors, assigns, heirs, personal representatives, executors, administrators, affiliates, agents, servants, employees and representatives of each party hereto, including those who may assume any or all of the above-described capacities, subsequent to the execution of this Agreement.

9. The parties hereto do hereby acknowledge and agree that they have either been represented or have had the opportunity to be represented by independent counsel of their own choice throughout all negotiations which preceded the execution of this Agreement.

10. This Agreement contains the entire Agreement and understanding between the parties and supersedes and replaces all prior negotiations or proposed agreements, written or oral. The parties hereto acknowledge that no other party, nor agent or attorney of any other party, has made any promise, representation or warranty whatsoever, expressed or implied, not contained herein concerning the subject matter hereof, to induce this Agreement, and the parties acknowledge they have not executed this Agreement in reliance upon any such promise, representation or warranty not contained herein.

11. Every provision of this Agreement is intended to be severable. In the event that any term of provision hereof is declared to be illegal or invalid, for any reason whatsoever, by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable.

12. In the event that legal proceedings are initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover all costs and expenses including a reasonable amount for attorneys' fees.

13. The parties to this Agreement understand that portions of this Agreement treating the Mills Section 210 Complaint must be approved by the Secretary of Labor, or her designee. The parties recognize that the Secretary of labor does not approve or disapprove of the aspects of this Agreement which do not pertain to Mills' Section 210 Complaint. These provisions (Non-section 210) do not depend on approval by the Secretary of Labor for their validity and the parties so acknowledge.

14. Mills hereby voluntarily withdraws his Complaint filed with the Department of Labor on or about September 9, 1991 and hereby further withdraws his request for an appeal of the determination of the Department of Labor.

15. Notwithstanding any other provisions to this Agreement, nothing in this Agreement shall be construed to prohibit Mills from reporting or disclosing any suspected incident of illegal activity of any nature, any nuclear safety concerns, any workplace safety concerns, or any public safety concerns to the United States Nuclear Regulatory Commission, the United States Department of Labor, or any other federal, state or local governmental agency or court, and shall not be construed to prohibit Mills from participating in any way in any state or federal administrative, judicial, or legislative proceeding or investigation with respect to any claims or matters not resolved and terminated by the preceding paragraphs.

16. The parties hereto covenant and agree to execute a Joint Stipulation for the Dismissal With Prejudice of Mills' Section 210 matter, a copy of which is attached herein as Exhibit A. All parties will bear their own costs and attorneys' fees. The above-mentioned Stipulation shall be filed with the Department of Labor following the full execution of this Agreement. The parties agree to cooperate to the end of securing the Secretary of Labor's dismissal with prejudice of the Mills' Section 210 Complaint.

17. This Agreement shall be deemed to have been drafted equally by all parties hereto. The language of all parts of this Agreement shall be construed as a whole, according to its fair meaning, and by presumption or other principal amount the language herein is to be construed against any party shall not apply.

18. The performance of the obligations set forth in this agreement shall not be triggered before the approval of the Agreement by the Secretary of Labor and the dismissal with prejudice of Mills, Section 210 Complaint.

DATED this 25th day of November, 1991.

STEPHEN MILLS

ARIZONA PUBLIC SERVICE  
COMPANY

By [Editor's Note: name illegible]  
Its: Employee Relations Representative

STATE OF ARIZONA

ss.

County of Maricopa

On this 25 day of November, 1991, before me the undersigned notary public, personally appeared Stephen Mills, known to me to be the person whose name is subscribed to the within instrument and acknowledged that he executed the same for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Judy Lilly  
NOTARY PUBLIC  
My Commission Expires: Nov. 2 1993

STATE OF ARIZONA

ss.

County of Maricopa

On this 25 day of November, 1991, before me the undersigned notary public, personally appeared an authorized representative of, ARIZONA PUBLIC SERVICE COMPANY, ("APS") to-wit its E/R Representative known to me to be the person whose name is subscribed to the within instrument and acknowledged that he (she) executed the same on behalf of APS, being authorized so to do for the purposes therein contained.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Judy Lilly  
NOTARY PUBLIC

My Commission Expires: Nov. 3, 1993

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UNITED STATES OF AMERICA  
BEFORE THE U.S. DEPARTMENT OF LABOR  
STEPHEN A. MILLS,  
Complainant,

vs.

ARIZONA PUBLIC SERVICE COMPANY,  
Respondent.

JOINT STIPULATION FOR:  
(1) DISMISSAL WITH PREJUDICE OF MILLS' SECTION 210 COMPLAINT AND  
HIS APPEAL FROM THE DETERMINATION OF THE PHOENIX DISTRICT  
OFFICE OF THE UNITED STATES DEPARTMENT OF LABOR AND  
(2) APPROVAL OF THE PARTIES' SETTLEMENT AGREEMENT RESOLVING  
MILLS' SECTION 210 COMPLAINT

Based upon the attached Settlement Agreement and General Release, Stephen A. Mills, Complainant herein, and Arizona Public Service Company, respondent herein, hereby jointly stipulate: (1) For dismissal with prejudice of Mills' Section 210 Complaint and his appeal from the determination of the Phoenix District Office of the United States Department of Labor; and (2) For approval of the parties' Settlement Agreement and Mutual General Release resolving Mills' Section 210 Complaint.

DATED, this 25 day of November, 1991.

SNELL & WILMER

By:  
Thomas J. Kennedy  
3100 Valley Bank Center  
Phoenix, AZ 85073-3100  
Attorneys for Respondent

STEPHEN A. MILLS

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